85-961

Supreme Court, U.S.
FILED
DEC 5 1985
JOSEPH F. SPANIOL, JR.
CLERK

NO .

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1985

CLARENCE H. HOLDING, PETITIONER,

V.

SOVRAN BANK , DONALD E. KOONCE , MUTUAL FINANCE CORPORATION , THOMAS S WORD , JR.,RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

CLARENCE H. HOLDING
1901 WOODBINE ROAD
RICHMOND , VIRGINIA
(804) 232 7418

COUNSEL FOR PETITIONER

COUNSEL OF RECORD

QUESTION PRESENTED

WHERE THE CONSTITUTIONAL DUE PROCESS RIGHTS HAVE BEEN VIOLATED AND DUE PROCESS OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION ABRIDGED WHICH HAVE BEEN DONE HERE CAUSING GREAT INJUSTICE AND INJURY; THIS COURT SHOULD HEAR THE PETITION AND GRANT RELIEF.

RESULTANT UNFAIR TRIAL PRODUCED DAMAGES AND INJURY BY THE LOWER COURT AND DENIED READDRESS IN THE SUPREME COURT OF VIRGINIA .

PARTIES TO THE PROCEEDING

PETITIONER IN THIS COURT AND PLANTIFF APPELLANT BELOW — CLARENCE H. HOLDING

RESPONDANT IN THIS COURT AND DEFENDANT APPELLEES BELOW — SOVRAN BANK , DONALD E KOONCE, MUTUAL FINANCE CORPORATION , THOMAS S WORD , JR.

P

TABLE OF CONTENTS

1. QUESTIONS PRESENTED 1.
3. TABLE OF AUTHORITIES 3.
4. BRIEF PRELIMINARY STATEMENT 4.
5. STAEMENT OF CASE 5.
6. REASONS FOR GRANTING THE PETITION 6.
7. ARGUMENTS 7.
8. CONCLUSION 8.
9. CERTIFICATE 8.
10. EXIBIT 1 APPLICATION FOR RELEASE 9.
11. EXIBIT 2 AMENDED APPL FOR RELEASE 10.
12. EXIBIT 3 ORDER CICUIT CT WESTMORELD 13
13. NOTICE OF APPEAL EXIBIT 4 14
14. EXIBIT 5 PETITION FOR APPEAL AND ASSIGN MENT OF ERRORS 15
15 EXIBIT 6 HOLDING CHECK $26,520.00 TO LILLIAN J. MUSE FINAL PAY OFF 18
16. EXIBIT 7 PAYMENTS OF DEED OF TRUST 76, 77, 78, 79, 80 FINAL PAY OFF 19
17. EXIBIT 8 CHECK TO MUTUAL FINANCE CORP 20
18 EXIBIT 9 CASH RECIPTS MUTUAL FINANCE CORP , BANK DEPOSITW , C.H. HOLDING PAY OFF OF $52,500.00 INT 249.16 21
19. EXIBIT 10 BOOKS OF MUTUAL FINANCE CORP , MORTGAGE RECEIVEABLE , C.H. HOLDING MORTGAGE PAY OUT $52,500.00 $52,500.00 JULY 1980 CLEARS MORTGAGES OUT MUTUAL FINANCE CORP ASSETS, NO LONGER AN ASSETS OF SAME 22
20. EXIBIT 11 LILLIAN J. MUSE WRITINGS ABOUT DISPOSITION OF PROPERTY IN HER ESTATE DURING LIFE TIME . IDENTIFIED BY BERTHA GALE, SISTER AS HER WRITINGS 23
21. EXIBIT 12 SUPREME CT OF VA ORDER 24
22. EXIBIT 13 SUPREME CT OF VA ORDER 25
23. NOTICE OF APPEAL TO US SUPREME CT 26

Exhibit 14

TABLE OF AUTHORITIES

UNITED STATES CONSTITUTION _ DUE PROCESS FOURTEENTH AMENDMENT - NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIBERTY OR PROPERTY WITHOUT DUE PROCESS OF LAW .

CONSTITUTIONAL PROVISIONS

14th AMENDMENT - DUE PROCESS TO THE UNITED STATES CONSTITUTION .

JURISDICTION OF THE COURT

GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED IS RULE 17 .1 (bϕ , (c) WHEN A STATE COURT OR FEDERAL COURT OF APPEALS HAS DECIDED AN IMPORTANT QUESTION QUESTION OF LAW WHICH HAS NOT BEEN , BUT SHOULD BE SETTLED BY THIS COURT, OR HAS DECIDED A FEDERAL QUESTION IN A WAY IN CONFLICT WITH THE APPLICABLE DECISIONS OF THIS COURT . THIS IS VERY IMPORTANT QUESTION INDEED AND SHOULD BE DECIDED BY THIS COURT BECAUSE OF THE DAMAGES AND INJURIES SUSTAINED COULD BE ASTONMINAL AND A HEAVY BURDEN TO BEAR .

NO.

IN THE

SUPREME COURT OF THE UNITED STATES

CLARENCE H. HOLDING.

PETITIONER,

V.

SOVRAN BANK , DONALD E. KOONCE , MUTUAL FINANCE CORPORATION , THOMAS S WORD, JR.,

RESPONDANT.

BRIEF

PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF UNITED STATES

A PRELIMINARY STATEMENT

YOUR PETITIONER , CLARENCE H. HOLDING BY COUNSEL MOVES THIS COURT TO HEAR AND GRANT THIS WRIT OF CERTIORARI ON THE GROUNDS HIS CONSTITUTIONAL RIGHTS OF DUE PROCESS HAVE BEEN ABRIDGED AND VIOLATED BY ORDERS OF SUPREME COURT OF VIRGINIA AND CIRCUIT COURT AS GUARANTEED BY THE XIV AMEND MENT TO THE UNITED STATES CONSTITUTION.... NOR SHALL ANY STATE DEPRIVE ANY PERSON OF LIFE, LIB ERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW. GREAT DAMAGES AND UNTOLD INJURIES WOULD BE SUS TAINED TO LOSE MY HOME AFTER IT HAS BEEN PAID OFF. IT WILL BE VERY TRYING TIMES AT MY AGE .

STATEMENT OF THE CASE

CLARENCE H. HOLDING VS SOVRAN BANK , DONALD E. KOONCE, MUTUAL FINANCE CORPORATION, THOMAS S WORD , JR. IS AS FOLLOWS: HERE WE HAVE AN AME NDED APPLICATION TO RELEASE A DEED OF TRUST AND NOTE ON GROUNDS AND AUTHORITY OF SECTION 55-66.5 OF THE CODE OF VIRGINIA ON 45 ACRES OF LAND WITH IMPROVEMENTS BETWEEN MUTUAL FINANCE CORP , MR. HOLDING WITH LILLIAN J. MUSE AS TRUSTEE. LILL IAN J. MUSE OWNED MUTUAL FINANCE CORP 100 % and operated it . the DEED OF TRUST AND NOTE WAS PAID IN FULL IN JULY , 1980 WHEN MR. HOLD ING PAID LILLIAN J. MUSE AS TRUSTEE $26,520. 00 . SOME OVER 5 YEARS AGO AND WAS TAKEN OUT OF THE ASSETS OF MUTUAL FINANCE CORPORATION. THE DEED OF TRUST AND NOTE SHOULD HAVE BEEN CANCELLED AND DELIVERED TO MR. HOLDING , BUT INADVERTENTLY THIS WAS NOT DONE BECAUSE OF THE CLOSE RELATIONSHIP BF MR. HOLDING AND MRS. MUSE .THE SEQUENCES OF PAYMENTS ARE SHOWN BY EXIBITS . AND THE FINAL PAY OFF ON JULY ,1980 IT IS VERY SIMPLE TO FOLLOW THE PAYMENTS AND PAYOOF BY THE EXIBITS . MR. HOLDING AND MRS. MUSE HAD A CLOSE RELATIONSHIP AND HAD BEEN

GOING TOGETHER FOR 12 YEARS AND PLANNED TO BE MARRIED ON AUGUST 19, 1983, BUT DEATH STOLE THAT. MR. HOLDING HAD FOR 12 YEARS HELPED LILL IAN MUSE WITH THE SELECTION OF STOCK FOR HER PERSON AL AND MUTUAL FINANCE CORP ACCOUNTS WHICH HAD BEEN EXCEPTIONAL RESULTS AND BENEFITS TO HER . THE NIGHT OF LILLIANS DEATH SHE ASK TO GO DOWN IN THE BASEMENT AND GET THEM DEED OF TRUST AND NOTE AND STOCK OF MUTUAL FINANCE CORPORATION THAT IT WAS TIME TO TURN THEM OVER TO ME THAT FOR SOMETIME SHE HAD PLANNED TO DO IT SHE WANT ED IT DONE NOW . MRS. MUSE DIED UNEXPECTONLY THAT EVENING AND THIS WAS NOT DONE . ON AUGUST 12, 1983 . MR. HOLDING THEN DEMANDED OF SOVRAN BANK EXECUTOR DONALD E. KOONCE TRUST OFFICER TO DEL iver THE DEED OF TRUST AND NOTE AND STOCK OF MUTUAL FINANCE STOCK TO HIM . TO NO AVAIL. WHERE UPON THIS ACTION WAS BROUGHT . CIRCUIT COURT ON OCTOBER 25, 1984 DENIED APPLICATION , MR. HOLD ING APPEALED TO SUPREME COURT OF VA. . SUPREME COURT DENIED AND WHEREUPON MR. HOLDING APPEALED. I COME TO YOU FOR A WRIT OFCERTIORARI TO CLEAR MY PROPERTY AND BRING PEACE OF MIND AND HEALTH.

REASONS FOR GRANTING THE PETITION

THIS IS AN ORDINARY CASE WHERE THE INDEBTINESS OF DEED OF TRUST AND NOTE HAD BEEN PAID OFF SINCE JULY 1980 SOME OVER 5 YEARS AGO. MR. HOLDING OWES NOTHING BECAUSE HE HAD PAID HIS DEBTAND SURELY IT SHOULD BE RELEASED AS LILLIAN WANTED IT . SHE KNOWS IT HAS BEEN PAID OFF BEFORE HER DEATH AND IN HER LIFETIME OVER 5 YEARS AGO .AND SHOULD BE RELEASED . THE DEED OF TRUST AND NOTE HAD BEEN IN THE BASEMENT ALONG WITH STOCK OF MUTUAL FIN ANCE CORP . WHERE SHE KEPT HER BOOKS . THE NIGHT BE HER DEATH SHE REQUESTED I GO DONE INTO THE BASEMENT AND GET THE STOCK OF MUTUAL FINANCE AND THE DEED OF TRUST AND NOTE THAT SHE WANTED IT DONE TONIGHT AND SHE HAD BEEN PLANNING TO DO SO FRO SOME TIME AND WAS CHANGING HER WILL AS SHOWN BY EXIBIT ° THAT DO TO THE DEMANDS ON HER SHE INADBERTEBTLY DID NOT DO SO ,BUT IT WAS PAST TIME TO DO IT . EXIBIT .

ARGUMENTS

HERE WE HAVE A VERY SIMPLE CASE , BUT SOVRAN AND CAIRNS WANT TO MAKE IT UGLY AND TRYING AND DISAGREEABLE UNHEALTHY . THE DEED OF TRUST AND NOTE WAS PAID IN FULL BEFORE TIME ON JULY 1980 SOME 5 YEARS AGO . SINCE IT WAS PAID IN FULL

AND REMOVED FROM THE BOOKS OF MUTUAL FINANCE CORP , MUTUAL FINANCE CORP. HAS NO RIGHT IN THE DEED OF TRUST AND NOTE AND IT IS THE PROPERTY OF MR. HOLDING AND HE OWES NOTHING ON THE DEED OF TRUST AND NOTE IT IS ONLY RIGHT AND LEGAL THAT THE DEED OF TRUST AND NOTE BE CANCELLED BY SOVRAN AND DELIVERED TO MR. HOLDING SO HE CAN CLEAR THE RECORDS AT THE COURT HOUSE. LONG AGO . ABUNDANCE OF EVIDENCE , RECORDS , CANCELLED CHECKS over 5 YEARS TIME PROVES WITH OUT A DOUBT THE TRUTH SHOULD PREVAIL AND DELIVERY OF THE CANCELLED NOTE BE MADE IMMEDIATELY .

CONCLUSION

WHEREFORE , SINCE THE DEED OF TRUST AND NOTE HAS BEEN PAID OFF IN FULL AHEAD OF TIME FOR OVER 5 YEARS NOW AND MORE THAN ADEQUATE PROOF WITH TEST IMONY UNDER OATH, RECORDS , CANCELLED CHECKS, CROSS CHECKS BY CASH RECEIPTS IN JOURNALS, BANK DEPOSITS CHECKED IN MUTUAL FINANCE CORP AND LILLANS ACCENTS THE TRUTH THE NOTE IS PAID. THE DEED OF TRUST AND NOTE SHOULD BE RELEASED.

RESPECTFULLY SUBMITTED,
CLARENCE H. HDLDING, COUNSEL FO
PETITIONER

CERTIFICATE

I CERTIFY I SENT POSTAGE PAID 3 COPIES OF PETITION TO COUNSEL FOR RESPONDANT SS CAIRANS OLD JAMES CENT DECEMBER 5 , 1985. Richmond, va 23219

CLARENCE H. HOLDING
COUNSEL FOR PETITIONER

V I R G I N I A

IN THE CIRCUIT COURT OF WESTMORLAND COUNTY

CLARENCE H. HOLDING , PLANTIFF

V.

SOVRAN BANK, DONALD E. KOONCE , DEFENDANTS

TO JUDGE DIXON L. FOSTER :

APPLICATION FOR RELEASE

COMES NOW YOUR PLANTIFF , CLARENCE H. HOLDING ON GROUNDS OF SECTION 55-66.5 OF THE CODE OF VIR GINIA AND MAKES APPLICATION FOR RELEASE TO THE COURT OF A DEED OF TRUST AND NOTE ON 45 ACRES OF LAND KNOWN AS MOUNT PLEASANT LYING AND BEING IN COPLE DISTRICT OF WESTMORELAND COUNTY, HAGUE,VA. FROM SOVRAN BANK EXECUTOR OF THE ESTATE OF LILLIAN J. MUSE DECEASED, AND DONALD E. KOONCE , TRUST OFF.

1. THE DEED OF TRUST AND NOTE WAS PAID IN FULL ON JULY 2, 1980 EVIDENCED BY ATTACHED DOCUMENTS.

2. NOTICE WAS GIVENON APRIL 23, 1984 TO THE DEFENDANTS TO RELEASE AND SEND THE DEED OF TRUST AND NOTE TO THE PBANTIFF .TO NO AVAIL.

3. SOVRAN BANK AND DONALD E. KOONCE, TRUST OFF, HAVE REFUSED AND MADE NO EFFORT TO RELEASE AND DELIVER THE DEED OF TRUST AND NOTE TO PLANTIFF.

WHEREFORE, YOUR PLANTIFF ASK THE COURT TO

Ex 1

TO RELEASE THE DEED OF TRUST AND NOTE ON 45 ACRES KNOWN AS MOUNT PLEASANT LYING AND BEING IN COPLE DISTRICT OF WESTMORELAND COUNTY, HAGUE , VA. ASK FOR COST , EXPENSES, ATTORNEY FEES, ENTAILED IN PREPARATION OF THIS CASE.

RESPECTFULLY SUBMITTED,
SIGNED
CLARENCE H. HOLDING ,
COUNSEL FOR PLANTIFF

MAY 24, 1984

NOTICE

PLEASE TAKE NOTICE THAT CLARENCE H. HOLDING WILL APPEAR BEFORE THE COURT ON THURSDAY , JUNE 11, 1984 AT 10:30 A. M. AT CIRCUIT COUT OF WESTMORELAND, MONTROSS , VA. TO ARGUE HIS APPLICATION FOR RE LEASE. YOU ARE INVITED TO ATTEND .

CLARENCE H. HOLDING
SIGNED
COUNSEL FOR PLANTIFF

CERTIFICATE

I CERTIFY I SENT POSTAGE PAID A COPY OF APPLICATION FOR RELEASE AND NOTICE TO SOVRAN BANK AND DONALD E. KOONCE AT F&M CENTER 12th AND MAIN ST P.O. BOX 26903 RICHMOND , VA. MAY 24, 1984.

CLARENCE H. HOLDING,
SIGNED
COUNSEL FOR PLANTIFF

V I R G I N I A

IN THE CIRCUIT COURT OF WESTMORELAND COUNTY

CLARENCE H. HOLDING, PLANTIFF,

V.

SOVRAN BANK, DONALD E. KOONCE , MUTUAL FINANCE CORPORATION , THOMAS S. WORD, JR. DEFENDANTS

AMENDED APPLICATION FOR RELEASE OF DEED OF TRUST AND NOTE

COMES NOW YOUR PLANTIFF , CLARENCE H. HOLDING BY COUNSEL ON GROUNDS AND AUTHORITY OF SECTION 55-66.5 OF THE CODE OF VIRGINIA AND MAKES APPLICATION FOR RELEASE TO THE COURT OF A DEED OF TRUST AND NOTE MADE BY MUTUAL FIANCE CORP AND CLARENCE H. HOLDING AND LILLIAN J. MUSE , TRUSTEE ON 45 ACRES OF LAND KNOWN AS MOUNT PLEASANT LYING AND BEING IN COPLE DISTRICT OF WESTMORELAND COUNTY , HAGUE , VA. LILLIAN J. MUSE DIED SUDDENLY ON AUGUST 12TH, 1983 AND SOVRAN BANK APPOINTED EXECUTOR OF WILL. PLAN TIFFSTATES AND ADVERSE THE DEED OF TRUST AND NOTE WAS PAID IN FULL IN JULY, 1980 BY ATTACHED DOCUM ENTS. NOTICE WAS AND IS GIVEN AGAIN APRIL 23, 1984 TO THE DEFENDANTS TO RELEASE THE DEED OF TRUST AND NOTE AND SEND TO PLANTIFF. THE DEFENDANTS HAVE REFUSED TO RELEASE THE DEED OF TRUST AND NOTEE AND HAS NOT MADE OR IS MAKING ANY EFFORT TO RE

Ex 2

LEASE AND DELIVER THE DEED OF TRUST AND NOTE TO THE PLANTIFF AS OF THIS MOMENT .

WHEREFORE , YOUR PLANTIFF, CLARENCE H. HOLDING ASK THIS COURT TO RELEASE THE DEED OF TRUST AND NOTE ON 45 ACRES KNOWN AS MOUNT PLEASANT, HAGUE , VA. FURTHER ASK FOR COST , EXPENSES , ATTORNEY FEES, AND PUNITIVE DAMAGES .

RESPECTFULLY SUBMITTED,
SIGNED
CLARENCE H. HOLDING
COUNSEL FOR PLANTIFF

NOTICE

PLEASE TAKE NOTICE THAT CLARENCE H. HOLDING WILL APPEAR ON THURSDAY JULY 12, 1984 AT 1 PM ATTHE CIRCUIT COURT OF WESTMORELAND COUNTY, MONSTROSS, VA. TO ARGUE HIS APPLICATION FOR RELEASE OF DEED OF TRUST AND NOTE. YOU ARE INVITED TO ATTEND.

SIGNED
CLARENCE H. HOLDING,
COUNSEL FOR PLANTIFF

CERTIFICATE

I CERTIFY I SENT POSTAGE PAID A COPY OF ABOVE TO COUNSEL FOR DEFENDANTS , THOMAS S. WORD, JR. 1400 ROSS BLDG, RICHMODN , VA.23219. JUNE 17, 1984.

SIGNED
CLARENCE H. HOLDING
COUNSEL FOR PLANTIFF

V I R G I N I A

IN THE CIRCUIT COURT OF WESTMORELAND COUNTY

CLARENCE H. HOLDING , PLANTIFF
V.

SOVRAN BANK , DONALD E. KOONCE , MUTUAL FINANCE CORP , THOMAS S. WORD JR. DEFENDANTS

ORDER

PLANTIFF HOLDING,S AMENDED APPLICATION FOR RELE ASEOF NOTE, DEED OF TRUST CAME TO BE HEARD ON SEPTEMBER 26, 1984. PLANTIFF TESTIFIED IN HIS OWN BEHALF AND PRESENTED VARIOUS RECORDS OF MUTUAL FINANCE CORPORATION AND LILLIAN J. MUSE. UPON CONSIDERATION OF THE TESTIMONY OF MR. HOLDING, A REVIEW OF THE RECORDS , AND THE ARGUMENTS OF COUNSEL, THE COURT FINDS THAT PLANTIFF HOLDING HAS PRESENTED INSUFFICIENT EVIDENCE OF PAYMENT OR DISCHARGE OF HIS INDEBTEDNESS TO JUSTIFY A RELEASE OF THE DEED OF TRUST .

WHEREFORE , PLANTIFF,S APPLICATION IS DENIED AND THIS CAUSE IS DISMISSED . THE CLERK SHALL SE ND A COPY OF THIS ORDER TO COUNSEL OF ALL PARTIES.

ENTER: 10/25/84
DIXON L FOSTER SIGNED
JUDGE

WE ASK FOR THIS_____ SIGNED SCOTT S CAIRNS FOR DEFs

SEEN AND OBJECTED TO _____ SIGNED J L ROBERTSON FOR PL

Ex 3

V I R G I N I A

IN THE CIRCUIT COURT OF WESTMORELAND COUNTY

CLARENCE H. HOLDING, PLANTIFF ,

V.

SOVRAN BANK , DONALD E. KOONCE , MUTUAL FINANCE COR. , THOMAS S. WORD, JR. DEFENDANTS.

NOTICE OF APPEAL

PURSUANT TO RULE 5.6 OF THE RULES OF SUPREME COURT OF VIRGINIA, YOUR PLANTIFF ,CLARENCE H. HOLDING , BY COUNSEL GIVES HEREBY FORTHWITH NOTICE OF APPEAL OF AND ORDERDATED SEPTEMBER 25, 1984 FINAL ORDER OCTOBER 25, 1984 , BY JUDGE DIXON L. FOSTER OF THE FIFTEENTH DISTRICT JUDICIL OF COMMONWEALTH OF VA. A STATEMENT OF FACTS , TESTIMONY OR OTHER INCIDENTS OF THE CASE IS TO BE FILED

RESPECTFULLY SUBMITTED ,
SIGNED
CLARENCE H. HOLDING
COUNSEL FOR PLANTIFF

CERTIFICATE

I CERTIFY I SENT POSTAGE PAID A COPY OF ABOVE NOTICE OF APPEAL TO COUNSEL FORTHE DEFENDANTS, THOMAS S. WORD , JR. 1400 ROSS BUILDING , RICH MOND , VA. 23219 .

SIGNED Z
CLARENCE H. HOLDING
COUNSEL FOR PLANTIFF

Exhibit A

V I R G I N I A

IN THE SUPREME COURT

CLARENCE H. HOLDING, APPELLANT,

V.

SOVRAN BANK , DONALD E. KOONCE , MUTUAL FINANCE CORP., THOMAS S. WORD , JR. APPELLEES .

PETITION FOR APPEAL AND ASSIGNMENT OF ERRORS

ENCLOSED CHECK FOR $25.00 CLERK,S FEE.

PURSUANT TO RULE 5-21, 5-22,5-24 of THE RULES OF THE SUPREME COURT OF VIRGINIA, YOUR APPELLANT, CLARENCE H. HOLDING BY COUNSEL PRESENTS A PETITION FOR APPEAL AND ASSIGNMENT OF ERRORS AS SET FORTH. FOR GOOD CAUSE AND TO ENABLE THIS HONORABLE COURT TO ATTAIN THE ENDS OF JUSTICE ASSIGNMENT OF ERRORS ARE HEREBY MADE TO A FINAL ORDER OF CIRCUIT COURT OF WESTMORELAND COUNTY DATED OCTOBER 25, 1984. your AppellANT PRAYS FOR RELIEF AND REVERSAL OF THE SAID ORDER AND TO GRANT A RELEASE OF HIS PRO PERTY, 45 ACRES OF LAND KNOWN AS MOUNT PLEASANT LOCATED IN WESTMORELAND COUNTY, HAGUE , VA. THE AMENDED ACTION WAS BROUGHT ON GROUNDS AND AUTHOR ITY OF STATUTES SECTIONS 55-66.5 of CODE OF VIR GINIA-RELEASE MADE BY COURT . FINAL ORDER OF LOW ER COURT WAS OBJECTED TO . FOR GOOD CAUSE AND TO

Ex 5

BHIS HONORABLE COURT TO ATTAIN THE ENDS OF JUST ICE THE ASSIGNMENT OF ERRORS ARE FOUND BELOW:

1. JUDGE ERRORED- VIOLATED THE DUE PROCEES OF 14th AMENDMENT TO U.S. CONSTITUTION AND STATE CONSTITUTION RIGHTS VIOLATED .

2. JUDGE ERRORED - FAILED TO GIVE FAIR TRIAL .

3. JUDGE ERRORED- FAILED TO RELEASE THE DEED OF TRU ST AND NOTE .

4. JUDGE FAILED AND ERRORED TO ACKNOWEDGE PAY MENT IN FULL THE DEED OF TRUST AND NOTE.

5. JUDGE ERRORED- FAILED TO ACKNOWLEDGE THE EVIDENCE TESTIMONY UNDER OATH DOCUMENTED BY DOCUMENTS OF CANCELLED CHECKS , RECORDS , BOOKS , EXIBITS WHICHM PROVED THE DEED OF TRUBT AND NOTE WAS PAID IN FULL .

6. JUDGE ERRORED - FAILED TO RELEASE THE DEED OF TRUST AND NOTE WHEN NO DEFENDANTS SHOWED IN COURT AND NO DEFENDANTS TESTIFIED.

7. JUDGE ERRORED- VIOLATED STATUTES OF VIRGINIA SEC 55-66.5 CODE OF VIRGINIA WHICH ORDERED AND MANDATED THE JUDGE TO DO SO AFTER PROOF OF PAYMENT AND DISCHARGE OF DEBT .

8. JUDGE ERRORED - FAILED TO RELEASE THE DEED OF TRUST AND NOTE AFTER TESTIMONY UNDER OATH AND SUPPORTED DOCUMENTED BY CANCELLED CHECKS, RECORDS , BOOKS AND EXIBITS SUBMITTED AND AGREED ON BY OPPOSING COUNSEL BEFORE COURT .

WHEREFORE , FOR GOOD CAUSE AND TO ENABLE THE COURT TO ATTAIN THE ENDS OF JUSTICE, YOUR APPEL LANT, CLARENCE H. HOLDING ASK AND PRAYS THE COU RT WILL GIVE HIM RELIEF AND REVERSAL OF LOWER

COURT WITH JUDGMENT FOR APPELLANT AND RELEASE RELEASE OF HIS PROPERTY WITH COSTS , LEGAL FEES, other costs incident to the cause , so Justice CAN BE AND MAY BE DONE .

RESPECTFULLY SUBMITTED,
JANUARY 22, 1985 SIGNED
CLARENCE H. HOLDING
COUNSEL FOR APPELLANT

CERTIFICATE

UNDER RULE 5:22 MADE. SIGNED
CLARENCE H. HOLDING
COUNSEL FOR APPELLANT

CERTIFICATE

I CERTIFY I SENT POSTAGE PAID A COPY OF ABOVE PETITION FOR APPEAL AND ASSIGNMENT OF ERRORS TO COUNSEL FOR DEFENDANTS, APPELLEES, SCOTT S CAIRNS AT 1400 ROSS BUILDING , RICHMOND , VA 23219. 1/22/85.

SIGNED

CLARENCE H. HOLDING
COUNSEL

Mrs. Lillian P. Pruitt
Sun deposit available
Lillian P. Pruitt
6087 080 102 0205

3721 13 5 7 4 3

PAY TO THE ORDER OF FIRST & MERCHANTS NATIONAL BANK RICHMOND, VIRGINIA

JUL -2 80

PAY TO THE ORDER OF Mrs. Lillian P. Pruitt, Trustee July 2 1980 $26,520.00

Twenty six thousand five hundred twenty and no/100 DOLLARS

Russell Pub Pruitt Jr. Trustee

First-Citizens The Can Do Bank

Mortgage payment

For Balance paid in full

Clarence H. Holding

:053104377: 3684A0278: 7 26520000

88-437
531

Ex 6

C. H. HOLDING DEED OF TRUST NOTE

7/21/76 Loan $75,000.00 at 8-1/2% interest

7/21/77 Accrued interest $6,375.00 payment
plus $7,500.00 principal equals $13,875.00

7/21/78 Accrued interest $5,737.50 payment
plus $7,500.00 principal equals $13,237.50

7/21/79 Accrued interest $5,100.00 payment
plus $7,500.00 principal equals $12,600.00

7/21/80 Accrued interest $4,462.50 payment
plus $52,500.00 principal equals $56,962.50

Full payment of Loan # 75,000
plus intant on July, 1980 of C.H.H
Deed of Trust and note

DATE 9/26/84
PLAINTIFF'S EXHIBIT NO. 4
T. L. Judge

Ex 9

Pay to the Order of
Lincoln Savings and Loan
MUTUAL FINANCE CORPORATION

By _____ Pres.

FOR DEPOSIT ONLY ACCOUNT OF
LINCOLN SAVINGS
AND LOAN ASSOCIATION
5801 PATTERSON AVE.
RICHMOND, VA. 23226

JUL 14 1980

TELLER A

20

159

LILLIAN R. MUSE
3501 OLD GUN ROAD, EAST
MIDLOTHIAN, VIRGINIA 23113

68-1/510 05

July 13 1980 $ 56062.50

PAY TO THE ORDER OF Mutual Finance Corporation - - - - - - - - - - - - - - $56062.50

Fifty six thousand nine hundred sixty two and 50/100 - - DOLLARS

FSNB FIRST & MERCHANTS NATIONAL BANK Richmond Virginia

1-2063 FOR CHARGE OFF

1:0510000 17: 14 [illegible] 0159 "0005596250"

Ex 8

AMERICAN FINANCE CORP	2/VA	2SL
	CASH RECEIPTS	DEPOSITS
July	51030	5696250
August	168218	
	219248	5696250

CASH RECEIPTS 1980

BEST AVAILABLE COPY

| | | |

E - MORTGAGES RECEIVABLE ✓

ESS MUTUAL FINANCE CORP. ✓

DEBITS	DATE 19 80		ITEMS	FOLIO	✓	CREDITS
5250000	Aug	31	C H HOLDING WESTMORELAND CO J/80 PAY OUT			5250000
			July 1980 CLEARS MORTGAGE FROM MUTUAL FINANCE ASSETS			

SHEET NO.

TERMS

Books of

RATING

CREDIT LIMIT

NAM. MUTUAL FINANCE CORP

ADDR.

Assets Sources & Posts Ability	DATE 1980		ITEMS	FOLIO
	July	1	Brt Fwd	

Ex. 10

BEST AVAILABLE COPY

Bertha - Burden Book
+ any Personal Property
not otherwise stated
Clarence H. Blue Bell
+ Stock + MFC

Elizabeth Johnson
Redmond - White
+ 5000.00
Royal Union - 10000
Louis Smith - 2000

Hand writing
VERIFIED BY
BERTHA A. GALE
SISTER IN HOUSE
LILLIAN

DATE 9/26/84
PLAINTIFF'S EXHIBIT NO. 14
D.L.I. Judge

Ex 11

V I R G I N I A

IN THE SUPREME COURT OF VIRGINIA HELD AT THE SUPREME COURT BUILDING IN THE CITY OF RICHMOND ON WEDNESDAY the 10th DAY OF JULY , 1985.

CLARENCE H. HOLDING , APPELLANT ,

AGAINST RECORD NO. 850060
CIRCUIT COURT N. 632

FIRST & MERCHANTS NATIONAL BANK (SOVRAN)ET AL.,
APPELLEES.

FROM THE CIRCUIT COURT OF WESTMORELAND COUNTY UPON REVIEW OF THE RECORD IN THIS CASE AND CONSIDERATION OF THE ARGUMENTS SUBMITTED IN SUPPORT OF AND IN OPPOSITION TO THE GRANTING OF AN APPEAL , THE COURT IS OF OPINION THERE IS NO REVERSIBLE ERROR IN THE JUDGMENT COMPLAINED OF . ACCORDINGLY , THE COURT REFUSES THE PETITION FOR APPEAL .

A COPY ,

TESTE:

DAVID B BEACH , CLERK
BY CYBTHIA L MCCOY , D. C.
SIGNED

Ex 12

V I R G I N I A

IN THE SUPREME COURT OF VIRGINIA HELD AT THE SUPREME COURT BUILDING IN THE CITY OF RICHMOND ON FRIDAY THE 6th DAY OF SEPTEMBER , 1985.

CLARENCE H. HOLDING , APPELLANT,

AGAINST RECORD NO. 850060
CIRCUIT COURT NO 632

FIRST & MERCHANTS NATIONAL BANK (SOVRAN), ET AL
APPELLEES

UPON A PETITION FOR REHEARING

ON CONSIDERATION OF THE PETITION OF THE APPELLANT TO SET ASIDE THE JUDGMENT HEREIN ON 10th DAY OF JULY , 1985 AND GRANT A REHEARING THEREOF, THE PRAYER OF SAID PETITION IS DENIED .

CHIEF JUSTICE CARRICO TOOK NO PART IN THE CONSID ERATION OR DECISION OF THIS CASE .

A COPY,

TESTE: D B BEACH , CLERK
SIGNED

Ex 13

V I R G I N I A

IN THE SUPREME COURT

CLARENCE H. HOLDING , APPELLANT,

V.

SOVRAN BANK , MUTUAL FINANCE CORP , DONALD E. KOONCE , THOMAS S. WERD, JR. APPELLES .

To the Supreme Court of Virginia

NOTICE OF APPEAL

THE APPELLANT , CLARENCE H. HOLDING, BY COUNSEL PRO SE DOTH HEREBY GIVE THE SUPREME COURT OF VIR GINIA NOTICE OF APPEAL FROM AN ORDER DATED SEP TEMBER , 1985 MAD ORDER DATED JULY 10, 1985. TO THE SUPREME COURT OF THE UNITED STATES. I, THERE FORE HEREBY REQUEST THE CLERK OF SUPREME COURT OF VIRGINIA TO FORWARD THE RECORDS OF THE CASE TO THE SUPREME COURT OF THE UNITED STATES IN WASHINGTON, D. C.

RESPECTFULLY SUBMITTED ,
SIGNED
CLARENCE H. HOLDING,
COUNSEL FOR PLANTIFF

CERTIFICATE

I certify I sent A COPY OF THE APPEAL TO THE SUP REME COURT OF UNITED STATES TO SCOTT S. CAIRNS, COUNSEL FOR APPELLEES AT 1400 ROSS BLDG. RICHMOND VIRGINIA 23219 . SEPTEMBER 13, 1985 .

SIGNED
CLARENCE H. HOLDING

Exh

Supreme Court, U.S.
FILED
JAN 8 1986
JOSEPH F. SPANIOL, JR.
CLERK

NO. 85-961

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

CLARENCE H. HOLDING,

Petitioner,

v.

SOVRAN BANK, DONALD E. KOONCE, MUTUAL FINANCE CORPORATION, AND THOMAS S. WORD, JR.,

Respondents.

Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of Virginia

Scott S. Cairns
McGUIRE, WOODS & BATTLE
One James Center
Richmond, Virginia 23219
(804) 644-4131
Attorney for Respondents

APPELLATE PRINTING SERVICES, INC., HERITAGE BLDG., RICHMOND, VA (804) 643-7789

BEST AVAILABLE COPY

Question Presented for Review

Should this Court review the Supreme Court of Virginia's denial of Mr. Holding's petition for appeal where no federal question was presented and the denial involved a question of fact?

Parties to the Proceeding

The parties are listed in the style of the case. Sovran Bank, N.A. is a wholly-owned subsidiary of Sovran Financial Corporation. Other than wholly-owned subsidiaries, neither Sovran Financial Corp. nor Sovran Bank, N.A., has any subsidiaries or affiliates. Mutual Finance Corporation is a privately held corporation with no parent corporations, subsidiaries or affiliates.

Table of Contents

Questions Presented for Review.....ii

Parties to the Proceeding.....iii

Table of Authorities.....v

Opinions Delivered in the Court Below.....vi

Grounds upon which the Jurisdiction of this Court is Invoked.....vi

Statute Involved.....vii

Statement of the Case.....1

Reasons for Denying Writ.....5

A. No federal question arises from this case because the state court proceedings complied with Constitutional standards.....5

B. The decisions challenged on Appeal involved questions of fact which should not be reviewed by this Court.....7

Conclusion.....10

Certificate of Service.....11

Table of Authorities

Cases

Cleveland Board of Education v. Loudermill, 470 U.S. ___, 84 L.Ed 2d 494, 503 (1985).....6

Frey Roofing Co. v. Wood, 344 U.S. 157, 160 (1953).....7

Remington Paper Co. v. Watson, 173 U.S. 443, 451 (1899).....7

Statutes

28 U.S.C. § 1257(3).....5

Virginia Code § 55-66.5.....8

Virginia Code § 8.01-680.....9

Other

Rule 17.....5

Opinion Delivered in the Court Below

The July 10, 1985 and September 6, 1985 Orders of the Supreme Court of Virginia of which Petitioner seeks review are retyped as Exhibit 12, page 24, and Exhibit 13, page 25, to Petitioner's brief.

The Circuit Court's opinion of October 25, 1984 is retyped as Exhibit 3, page 13, to Petitioner's brief.

Grounds Upon Which the Jurisdiction of this Court is Invoked

Respondents deny that this Court has jurisdiction because the Petition for Writ of Certiorari contains no

allegations sufficient to support jurisdiction under Rule 17 of the Rules of this Court, nor does the Petition make any allegation that calls into question the constitutionality of a state statute. See 28 U.S.C. § 1257(3).

Statute Involved

In the Virginia circuit court, Petitioner sought release of a deed of trust pursuant to Virginia Code § 55-66.5(a), which provides:

> Releases made by court. - (a) Any person who owns or has any interest in real estate or personal property on which such encumbrance exists may, after twenty days' notice thereof to the person entitled to such encumbrance, apply to the circuit

court of the county or corporation in whose clerk's office such encumbrance is recorded to have the same released or discharged; and upon proof that it has been paid or discharged or upon its appearing to the court that more than twenty years have elapsed since the maturity of the lien or encumbrance, raising a presumption of payment which is not rebutted at the hearing, such court shall either order the same to be entered by the clerk on the margin of the page in the book wherein the encumbrance is recorded or order the clerk to record a certificate of satisfaction or a certificate of partial satisfaction, which marginal entry or certificate of satisfaction or certificate of partial satisfaction, when so made, shall operate as a release of such encumbrance.

All releases made prior to June twenty-four, nineteen hundred and forty-four, by any court under this section upon such presumption of payment so arising and not rebutted shall be validated.

NO. 85-961

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

CLARENCE H. HOLDING,

Petitioner,

v.

SOVRAN BANK, DONALD E. KOONCE,
MUTUAL FINANCE CORPORATION,
AND THOMAS S. WORD, JR.,

Respondents.

Brief in Opposition to Petition for
Writ of Certiorari to the
Supreme Court of Virginia

Statement of the Case

Sovran Bank, N.A. ("Sovran"), is the executor and trustee under the will of Lillian J. Muse, who died on

August 13, 1983. At the time this action began, Sovran was known as First and Merchants National Bank. Donald E. Koonce is a Trust Officer with Sovran and is responsible for administration of Mrs. Muse's estate. Mutual Finance Corporation is a personal holding corporation of Mrs. Muse, and Thomas S. Word, Jr. is an officer of that corporation.

On July 21, 1976 petitioner Clarence H. Holding ("Mr. Holding") borrowed $75,000 from Mutual Finance Corporation. He endorsed a note for that amount, payable with eight and one-half percent interest per annum, and drafted and executed a deed of trust on certain property owned by him as security for the loan.

On May 24, 1984, nine months after Mrs. Muse's death, Mr. Holding filed a Application for Release of the Deed of Trust, naming Sovran Bank and Donald Koonce as defendants and claiming payment of the note. He later amended his Application to add Mutual Finance Corporation and Mr. Word as defendants.

A hearing was held on September 26, 1984 in the Circuit Court of Westmoreland County, Virginia, at which time Mr. Holding testified in his own behalf and presented various records of Mutual Finance Corporation and Lillian Muse.[1] After a bench

---

[1]Certain of those records are
(Footnote Continued)

ruling for defendants, on October 25, 1984, the Circuit Court issued a written opinion[2] that Mr. Holding had presented insufficient evidence of payment or discharge of his indebtedness and denied Mr. Holding's application for release of the deed of trust.

On July 10, 1985 the Supreme Court of Virginia dismissed Mr. Holding's Petition for Appeal, finding no reversible error in the judgment of the Circuit Court. On September 6,

---

(Footnote Continued)
attached as Exhibits 6 through 11 to the Petition. However, the Exhibits contain notations, apparently made by Mr. Holding, that did not appear on the records when presented to the Circuit Court.

[2]Exhibit 3 to the Petition for Writ of Certiorari.

1985, the Supreme Court of Virginia denied Mr. Holding's request for a rehearing on his Petition.

Reasons for Denying the Writ

This is an ordinary case of a litigant failing to carry his burden of proof. There are no issues in this action that meet the requirements of Rule 17 or of 28 U.S.C. § 1257(3). There are no special or important reasons for this Court to exercise its discretion and grant Mr. Holding's Petition.

A. No federal question arises from this case because the state court proceedings complied with Constitutional standards.

Although Mr. Holding claims a violation of his Constitutional rights, his Petition fails to explain how the Supreme Court of Virginia

abridged those rights. Moreover, the record clearly shows that the Virginia Supreme Court properly denied Mr. Holding's Petition for Appeal and that the Circuit Court trial was properly conducted and violated no due process rights. No limit was placed on testimony or evidence Mr. Holding was allowed to submit. All documents presented to the Court were received. No restrictions were placed on the cross examination of witnesses and an impartial decision-maker heard the claim. The Court considered the evidence and decided against Mr. Holding. The Circuit Court clearly provided Mr. Holding notice and an opportunity for a hearing appropriate to the nature of the case. Cleveland

Bd. of Educ. v. Loudermill, 470 U.S. ___, 84 L.Ed2d 494, 503 (1985). Mr. Holding cannot claim a violation of due process simply because he was not successful in proving his case. Remington Paper Co. v. Watson, 173 U.S. 443, 451 (1899).

B. The decisions challenged on appeal involved questions of fact which should not be reviewed by this Court.

The Circuit Court's finding that Mr. Holding did not meet his required burden of proof is a question of fact. This Court has held that it will accept a state court's findings in the absence of exceptional circumstances and as long as the findings are not without factual foundation. Frey Roofing Co. v. Wood, 344 U.S. 157, 160

(1953). Mr. Holding has not alleged any exceptional circumstances to cause disruption of the findings of the Virginia courts, and, therefore, his case should not be reviewed by this Court.

Moreover, even if this Court were to take the extraordinary step of re-examining the facts here, the record shows the the Petition for Appeal was properly denied and the Circuit Court correctly found that Mr. Holding failed to present sufficient evidence to support his claim of payment.

Under Virginia Code § 55-66.5, Mr. Holding bore the burden of proving that he paid his debt with an intent to discharge that debt. Hall Bldg. Corp. v. Edwards, 142 Va. 209, 128

S.E.2d 521 (1925). Mr. Holding admitted that he did not pay this indebtedness. He merely presented evidence of certain payments to Mutual Finance Corporation by Mrs. Muse. He presented no evidence concerning the purpose of these payments, other than his own uncorroborated claims. Based upon this evidence the Circuit Court correctly determined that Mr. Holding failed to present evidence sufficient to support a release of the Deed of Trust.

Under the established rule in Virginia, the findings of the trial court are not disturbed on appeal unless they are plainly wrong or without evidence to support them. Virginia Code § 8.01-680. Reviewing

the record and finding no error, the Virginia Supreme Court correctly denied the appeal.

Conclusion

There is no reason for this Court to review the Supreme Court of Virginia's refusal to grant Mr. Holding's Petition for Appeal. There are no Constitutional or even legal issues presented here. Instead, the Virginia Supreme Court's decision is based solely on state law and a finding of adequate factual grounds to support the lower court's decision. Therefore, the Petition for Writ of Certiorari to review the decision of the Virginia Supreme Court should be denied.

Respectfully submitted,

Scott S. Cairns
McGUIRE, WOODS & BATTLE
One James Center
Richmond, Virginia 23219
(804) 644-4131
Attorney for Respondents,
Sovran Bank, Donald E.
Koonce, Mutual Finance
Corporation and Thomas
S. Word, Jr.

CERTIFICATE OF SERVICE

I hereby certify that three true and exact copies of the foregoing Brief in Opposition to Petition for Writ of Certiorari to the Supreme Court of Virginia were mailed, postage prepaid, this 3rd day of January, 1986, to Clarence H. Holding, 1901 Woodbine Road, Richmond, Virginia 23225.